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प्राधिकार से प्रकाशित
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सं. 192, पोर्ट ब्लेयर, गुरुवार, 22 जुलाई, 2010
No. 192, Port Blair, Thursday, July 22, 2010

अण्डमान तथा निकोबार प्रशासन
सचिवालय
अधिसूचना

पोर्ट ब्लेयर, दिनांक 22 जुलाई, 2010

सं. 177/2010/फा. सं. 3-366/2003-श्रम.— भारत सरकार, श्रम मंत्रालय के दिनांक 13 दिसम्बर, 1955 की अधिसूचना सं. एल.आर. 1(59)/55 के साथ पठित औद्योगिक विवाद अधिनियम, 1947 (1947 का अधिनियम सं. 14) की धारा 17 की उप-धारा (1) तथा अण्डमान तथा निकोबार प्रशासन के दिनांक 07 अक्टूबर, 2008 की अधिसूचना सं. 144/2008/फा. सं. 17-2/2007-श्रम के अनुसरण में सचिव (श्रम), अण्डमान तथा निकोबार प्रशासन एतद्वारा श्रम न्यायालय, अण्डमान तथा निकोबार द्वीपसमूह, पोर्ट ब्लेयर द्वारा दिए गए निम्नलिखित अधिनिर्णय/आदेश को प्रकाशित करने का आदेश देते हैं, जो उप वन संरक्षक, वन्यजीव प्रभाग, हैडो और महा सचिव, अण्डमान तथा निकोबार वन्यजीव कामगार यूनियन, प्रेम नगर के बीच श्री. टी. कामेश्वर राव, दिहाड़ी मजदूर को कथित रूप से सेवा से अवैध तरीके से हटाए जाने को लेकर उठे औद्योगिक विवाद के संबंध में है और जिसे प्रशासन के दिनांक 5.4.2004 की अधिसूचना सं. 3-366/2003-श्रम द्वारा न्यायनिर्णय हेतु औद्योगिक न्यायाधिकरण को भेजा गया था।

सचिव (श्रम) के आदेश से

ह. /—
५८, उ. ज५ ५
सहायक सचिव (श्रम)

ANDAMAN AND NICOBAR ADMINISTRATION
SECRETARIAT

NOTIFICATION

Port Blair, dated the 22nd July, 2010

No. 177/2010/F.No.3-366/2003-Labour.— In pursuance of Sub-Section (1) of Section 17 of the Industrial Disputes Act, 1947 (Act No. 14 of 1947) read with Notification No. LR-1 (59)/55 dated 13th December, 1955 of the Govt. of India, Ministry of Labour and A&N Admn. Notification No.144/2008/F. No. 17-2/2007-Labour dated 7th October, 2008, the Secretary (Lab), Andaman and Nicobar Administration hereby orders for publishing the following Award/Order given by the Labour Court, Andaman and Nicobar Islands, Port Blair against the case as was referred to the Labour Court, A&N Islands for adjudication vide Administration's Notification No. 3-366/2003-Labour dated 05/04/2004 in the matter of an Industrial Dispute between the Deputy Conservator of Forests, Wild Life Division, Haddo and the General Secretary, Andaman & Nicobar Wildlife Workers Union, Prem Nagar over the alleged illegal termination of service of Shri P. Kameshwar Rao, Daily Rated Mazdoor.

**IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT
ANDAMAN AND NICOBAR ISLANDS**

Present: Shri Tapash Mookherjee, Presiding Officer
Labour Court, Port Blair

I.D. Case No. 14 of 2004

P. Kameshwar Rao
Workman
Through the General Secretary,
Wild Life Workers Union,
Port Blair. First Party

-Versus-

The Deputy Conservator of Forests
(Wild Life Division – I), Haddo
Port Blair Second Party

Wednesday, the 23rd day of June, 2010

JUDGEMENT

This is a reference by the Andaman and Nicobar Administration under Section 10 (1) read with Section 12 (5) and Sub-Section (2)-A of the Industrial Dispute Act 1947 to resolve a dispute between P. Kameshwar Rao, a workman, hereinafter described as the First Party and Deputy Conservator of Forests (Wild Life Division – I), Haddo, hereinafter described as the Second Party.

The point of reference is that

“Whether the action on the part of Deputy Conservator of Forests, Wildlife Division No. I Forest Department, Haddo in terminating the service of Shri P. Kameshwar Rao represented by General Secretary, A & N Wild Life Workers Union is legal and justified ? If not, what relief the concerned workman is entitled to”.

DECISION WITH REASONS

The first party claims that he was engaged as a Daily Rated Mazdoor by the second party from 1.5.1987 to 3.4.1988, and thereafter he had been illegally retrenched from the service without any notice, and subsequently he was re-employed on 1.3.1993 and his service had been thereafter extended upto 15.6.2002 with artificial break periodically. It is further claimed by the first party that the service of his juniors in the service had been regularized, but he was not given the benefit. Alleging such facts the first party claims the benefits allegedly given to his juniors by the second party.

The second party has filed a written objection in which they say that according to their need in different sessions they engage daily rated workmen as-and-when-necessary basis and for such reasons they had engaged the first party as Daily Rated Mazdoor from the month of May, 1987 to the month of April, 1988, and thereafter the first party left the job and subsequently on approach by the first party they had engaged the first party on 3.1.1993 to 31.5.1993 and 1.3.1997 to 30.6.1997 and again from 15.3.2001 to 15.8.2001 and again from 1.3.2002 to 15.6.2002. It is further claimed by the second party that temporary status given to some other Casual Labourers on the basis of a Govt. Order in the year 1993 could not be given to the first party as the first party was not in the role according to that Scheme.

The second party in the written objection filed on 26.10.2004 admitted that the first party was engaged by them during the period of May, 1987 to April, 1988. The fact had not been disputed also by the second party during the evidence of the first party. It was not a case of the second party that notice under section 25 F of the Industrial Dispute Act had been served upon the first party for retrenchment after April, 1988. It was the legal duty of the second party to send notice u/s 25 F of the Industrial Dispute Act to the first party for the termination of the job of the first party after April 1988 as the first party worked for more than 240 days in that spell. Whether the first party had himself left the job, or not, makes no difference as he had completed more than 240 days, so the termination of the service of the first party on that occasion was not justified.

Admittedly, the first party worked under the second party for different periods at different points of time after April, 1988, and at no point of time during those employments the first party raised his protest, or recorded his resentment at any Forum for the termination of his job after April, 1988. Otherwise to say, the first party had tacitly accepted the termination of the service after April, 1988, and thereafter the first party worked under the second party on different occasions at different points of time. In the circumstances, the first party is not entitled to any relief for such termination of his service after April, 1988, even though the termination was unjustified.

The first party in his evidence stated that he worked under the second party till 15.6.2001 with artificial breaks, but he has failed to produce any evidence to show the specific period of such employment. However, during cross examination the first party clarified that after 1998 he worked for six months at a stretch in the year 1992. The second party in their objection mentioned different periods during which the first party was employed under them as Daily Rated Mazdoor. But none of those periods cover 240 days at a stretch, so the first party was not entitled to any notice under section 25 F of the Industrial Dispute Act 1947 for those terminations. Moreover, from the periods of work admitted by the second party. It is evident that the first party had never seriously and sincerely wanted to work under the second party continuously. In fact, he had approached for job before the second party occasionally which had been allowed by the second party, in the circumstances, the terminations during those periods without notice was justified.

To conclude, the termination of the service of the first party by the second party after 30.04.1988 without any notice u/s 25 F of the Industrial Dispute Act was not justified, but for the reasons discussed above the first party is not entitled to any relief in the case.

Accordingly,

Ordered

That the I.D. case is disposed of with the following findings that the termination of the service of the first party by the second party after 30.04.1988 without any notice u/s 25 F of the Industrial Dispute Act was not justified, but the first party is not entitled to any relief for it.

Send a copy of this Judgement and order to the Andaman & Nicobar Administration alongwith the copy to the Assistant Secretary, Labour Department, Andaman & Nicobar Administration.

Dictated and corrected by me

Sd/-

P.O

Sd/-

23.06.2010

(Tapash Mookherjee)

Presiding Officer

Labour Court

Andaman & Nicobar Islands

By order of the Secretary (Labour),

Sd/-

(J.N. Roy)

Assistant Secretary (Lab.)